



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

THOMAS A. ROMEO,
Plaintiff,

v.

JOHN MARSHALL, et al.,
Defendants.

No. CV 07-2486-JFW (AGR)

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the entire file de novo, including the Complaint, the Magistrate Judge's Report and Recommendation, the Objections to the Report and Recommendation, and all records in the file. Having made a de novo determination, the Court agrees with the recommendation of the Magistrate Judge.

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation is adopted.

IT IS FURTHER ORDERED that:

1. Defendants' unenumerated Rule 12(b) motion based on failure to exhaust remedies is DENIED.

2. Defendants' motion to dismiss Tilton is GRANTED with leave to amend within 30 days. **Plaintiff's Third Amended Complaint must be filed and served within thirty days of the date of this Order.**
3. In all other respects, Defendants' motion to dismiss for failure to state a claim is DENIED without prejudice.

DATED: 8/25/08


JOHN F. WALTER
UNITED STATES DISTRICT JUDGE